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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/324,920	06/03/1999	JIM DEGRAAF	1960.122	2172

1059 7590 03/27/2002

BERESKIN AND PARR  
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TORONTO, ON M5H 3Y2  
CANADA

EXAMINER

BASHORE, ALAIN L

ART UNIT

PAPER NUMBER

2164

DATE MAILED: 03/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Offic Action Summary</b>	Application N .	Applicant(s)
	09/324,920	DEGRAAF ET AL.
	Examin r Alain L. Bashore	Art Unit 2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 2-1-02.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 34-54 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 34-54 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e).

***Specification***

2. The disclosure is objected to because of the following informalities: A related application is disclosed but not specified in under a separate heading for Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 39, 46, and 53 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. While the specification is enabling for financial instruments (to which the preferred embodiment is described utilizing), it does

not appear to be enabling for "non-financial" instruments. The specification defines non-financial instruments regarding reservoir capacities and insurance products, both of which also appear to be financial instruments.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 34 there is claimed in paragraph "d" recitations regarding executing a simulation but in subparagraph "ii" there is recited changing the dynamic portfolio, which appears to no longer be part of a simulation and therefore confusing.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 34-54 rejected under 35 U.S.C. 103(a) as being unpatentable over French in view of Melnikoff.

French discloses a method, portfolio of instruments and a system for determining performance evaluation associated with a user's portfolio by simulating changes to the composition of a dynamic portfolio under a plurality of scenarios at a plurality of time steps (fig. 1). The user's portfolio comprises a plurality of instruments. There is generated a dynamic portfolio comprising a plurality of instruments and having an initial composition that is identical to the composition of the user's portfolio. At least one rule for use in the simulation is defined in which changes are to be made to the composition of the dynamic portfolio. The defining step is performed prior to executing the simulation. At least one rule is dependant on at least one tracked attribute, one at least one tracking position, and on at least one trade position. One of a plurality of scenarios under which the simulation is to be performed is selected. The simulation is executed under a plurality of time steps on the dynamic portfolio with substeps of valuing the dynamic portfolio, changing the dynamic portfolio, and repeating the substeps a plurality of time steps for each of a plurality of scenarios. French discloses rules including a band rule, where the rules inherently are assigned priorities and evaluated in order of that priority (fig. 4).

French does not disclose producing an output risk metric for the dynamic portfolio wherein the output metric is dependant on the composition of the dynamic portfolio after executing the simulation.

Melnikoff discloses producing an output risk metric for a simulated portfolio wherein the output metric is dependant on the composition of the simulated portfolio after executing the simulation.

It would have been obvious to one with ordinary skill in the art to include calculation of a risk metric because of what is taught by both Melnikoff and French. Melnikoff teaches simulation of a portfolio and that risk is a measure of performance (col 1, lines 59-61), French teaches simulation of a portfolio to measure performance and acknowledges risk as a factor *per se* (col 7, lines 24-25).

### ***Response to Arguments***

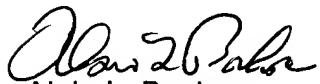
9. Applicant's arguments with respect to claims 34, 41 and 48 have been considered but are moot in view of the new ground(s) of rejection. . With regards to the interview on 18 January 2002, the final rejection was discussed and how the art of record would no longer meet newly added recitations under 35 USC 102. No discussion was made of possible 35 USC 103 rejections utilizing a combination of art already of record.

### ***Conclusion***

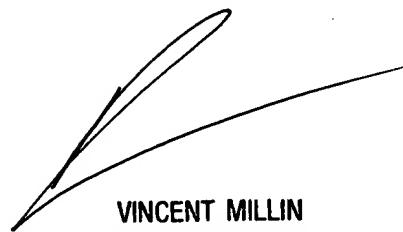
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 703-308-1884. The examiner can normally be reached on about 7:30 am to 5:00 pm (Alternate Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Alain L. Bashore  
March 21, 2002



VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100